

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

DENNIS LEE SWEARINGIN,)	
)	
Petitioner,)	
)	Civil Action Number
vs.)	5:02-8005-cv-UWC-RRA
)	
THE UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM OPINION

The magistrate judge filed a Report and Recommendation on March 15, 2005, recommending that Petitioner's motion to vacate or set aside the conviction or sentence under 28 U.S.C. § 2255 be denied, because the U.S. did not breach its plea agreement by declining to file a Rule 35 Motion, because the plea agreement gave the U.S. the sole discretion in determining whether to file a Rule 35 motion. Petitioner did not file objections to the Magistrate's Report and Recommendation.

Having carefully reviewed the record, the Court is of the opinion that the magistrate judge's Report and Recommendation is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Accordingly, Petitioner's motion to vacate or set aside the conviction or sentence under 28 U.S.C. § 2255 will be DENIED, by separate order.

Done this 31st day of March, 2005.



U.W. Clemon
Chief United States District Judge

